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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re application of:

Douglas R. Hackler SR, et al.

Confirmation No. 8539

Application No. 10/733,612

Filed: December 11, 2003

For: **SRAM CELL**

Group Art Unit: 2818

Examiner: Tu-Tu Ho

Docket No. 51889.4

Date: November 24, 2004

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant responds as follows to the September 29, 2004, Office Action requiring an election of species.

Claims 1-39 are pending in the application. All claims stand subject to restriction under 35 USC § 121. The Examiner requires the Applicants to elect a species from the following groups:

Species I. Illustrated in Figures 3 and 22, a local interconnect for a bottom gate insulated from a local interconnect for a top gate; and

Species II. Illustrated in Figures 4-5 and 21, a local interconnect coupled to a top gate and coupled to a bottom gate or a local interconnect coupled to a top gate and insulated from a bottom gate.

Applicants provisionally elect, with traverse, Species I. Claims 1-5, 8-12, 15-34, 37-39 read upon the elected species.

The Applicants respectfully traverse the assertion that no claims are generic as claims 1-3, 8-10, 15-18, 27-32, and 37 are most certainly generic to the embodiments of Figs. 3-5 and 21-22. As the Examiner correctly points out in the species listing, the difference between Figs. 3, 4, and 5 is the different coupling and insulation of interconnects for the top and bottom gates. However, the interconnect limitations that distinguish between Figs. 3, 4, and 5 are not found in any of the above listed generic claims. Such distinguishing interconnect limitations are found in the remaining claims. Accordingly, if the generic claims are found to be allowable, depending claims in Species II will represent patentable subject matter as well.

The Applicants further respectfully traverse the restriction as the Examiner has not given a basis or provided reasons for requiring restriction between the two groups listed above. "Examiners must provide reasons and/or examples to support conclusions." MPEP 803. "Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why the inventions *as claimed* are either independent or distinct; and (B) the reasons for insisting upon restriction as set forth in the following sections." MPEP 808.

The Examiner merely states in paragraph 3 that "these inventions are distinct for the reasons given above." However, the Examiner has not provided any reasons for distinction. The Examiner further states in paragraph 3 that the inventions "have acquired a separate

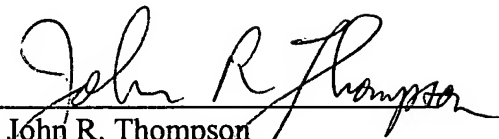
status in the art because of their recognized divergent subject matter,” but provides no basis whatsoever for this conclusion. The Applicants have a statement of conclusion and find it difficult to respond. A mere statement of conclusion is inadequate, and the reasons upon which the conclusion is based should be given. MPEP 816.

Furthermore, in order to establish reasons for insisting upon restriction, the Examiner must show by appropriate explanation one of the following: separate classification; separate status in the art when they are classified together; or a different field of search. MPEP 808.02 and 806.05(c). The Examiner has not provided any discussion of a separate classification, separate status in the art, or different field of search. Furthermore, the Examiner is only restricting six depending claims (6-7, 13-14, 35-36) which are specific to Species II. These depending claims recite different configurations for local interconnections and are very unlikely to require a different classification, separate status in the art, or a different field of search.

The Examiner is respectfully requested to withdraw restriction of the members of the above listed two groups. The Examiner has not explained how members of the groups are independent and distinct, require separate classification, have a separate status in the art, a different field of search, and lack unity of invention. An Office Action for restriction requires the reasons why the proposed species are either independent or distinct and the reasons for insisting upon restriction. MPEP 808. Absent these reasons, the Applicants are unable to respond to reasons the Examiner may have for restriction.

If there are any remaining issues of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,

By 
John R. Thompson
Registration No. 40,842

STOEL RIVES LLP
One Utah Center Suite 1100
201 S. Main Street
Salt Lake City, UT 84111-4904
Telephone: (801) 578-6994
Facsimile: (801) 578-6999